

**BEFORE THE
DEPARTMENT OF JUSTICE
Board of Registered Nursing
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CLAUDIA MCCANTS MARSHALL
2028 West 64th Street
Los Angeles, CA 90047
Registered Nurse License No. 252549

Respondent.

Case No. 2007-228

OAH No. L-2007100629

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Director of Consumer Affairs and the Board of Registered Nursing as the Decision and Order in the above entitled matter.

This Decision shall become effective on August 18, 2008.
It is so ORDERED July 16, 2008.

LaTranene W Tate

FOR THE DEPARTMENT OF JUSTICE

Board of Registered Nursing

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHEL W. VALENTINE, State Bar No. 153078
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
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6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **DEPARTMENT OF JUSTICE**
10 **BOARD OF REGISTERED NURSING**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-228

13 CLAUDIA MCCANTS MARSHALL
2028 West 64th Street
Los Angeles, CA 90047
14 Registered Nurse License No. 252549

OAH No. L-2007100629

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16 In the interest of a prompt and speedy settlement of this matter, consistent with the
17 public interest and the responsibilities of the Director of Consumer Affairs and the Board of
18 Registered Nursing the parties hereby agree to the following Stipulated Settlement and
19 Disciplinary Order which will be submitted to the Director for her approval and adoption as the
20 final disposition of the Accusation.

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing (hereinafter "Board"). She brought this action solely in her
24 official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of
25 the State of California, by Michel W. Valentine, Deputy Attorney General.

26 2. Respondent Claudia McCants Marshall (Respondent) is represented in this
27 proceeding by attorney Mary Work, whose address is 1334 Parkview Avenue, Manhattan Beach,

28 CA 90286. 2007-10-10
2007-10-10

3. On or about March 31, 1975, the Board of Registered Nursing issued Registered Nurse License No. 252549 to Claudia McCants Marshall (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2007-228 and will expire on September 30, 2008, unless renewed.

JURISDICTION

4. Accusation No. 2007-228 was filed before the Board, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 19, 2007. The First Amended Accusation was served on February 5, 2008. Respondent timely filed her Notice of Defense contesting the Accusation and First Amended Accusation. A copy of both Accusations No. 2007-228 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation and First Amended Accusation No. 2007-228. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and First Amended Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation and First Amended Accusation No. 2007-228.

4 9. Respondent agrees that her Registered Nurse License is subject to
5 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 **CONTINGENCY**

8 10. This stipulation shall be subject to approval by the Department of Justice.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
10 Registered Nursing may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent or her counsel. By signing the
12 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board
14 fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
15 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
16 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
17 further action by having considered this matter.

18 11. The parties understand and agree that facsimile copies of this Stipulated
19 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
20 force and effect as the originals.

21 12. In consideration of the foregoing admissions and stipulations, the parties
22 agree that the Board of Registered Nursing may, without further notice or formal proceeding,
23 issue and enter the following Disciplinary Order:

24 **DISCIPLINARY ORDER**

25 IT IS HEREBY ORDERED that Registered Nurse License No. 252549 issued to
26 Respondent Claudia McCants Marshall (Respondent) is revoked. However, the revocation is
27 stayed and Respondent is placed on probation for three (3) years on the following terms and
28 conditions.

1 **Severability Clause.** Each condition of probation contained herein is a separate
2 and distinct condition. If any condition of this Order, or any application thereof, is declared
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
5 and enforceable to the fullest extent permitted by law.

6 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
7 A full and detailed account of any and all violations of law shall be reported by Respondent to
8 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
9 compliance with this condition, Respondent shall submit completed fingerprint forms and
10 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
11 as part of the licensure application process.

12 2. **Comply with the Board's Probation Program.** Respondent shall fully
13 comply with the conditions of the Probation Program established by the Board and cooperate
14 with representatives of the Board in its monitoring and investigation of the Respondent's
15 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
16 within no more than 15 days of any address change and shall at all times maintain an active,
17 current license status with the Board, including during any period of suspension.

18 Upon successful completion of probation, Respondent's license shall be fully
19 restored.

20 3. **Report in Person.** Respondent, during the period of probation, shall
21 appear in person at interviews/meetings as directed by the Board or its designated
22 representatives.

23 4. **Residency, Practice, or Licensure Outside of State.** Periods of
24 residency or practice as a registered nurse outside of California shall not apply toward a reduction
25 of this probation time period. Respondent's probation is tolled, if and when she resides outside
26 of California. Respondent must provide written notice to the Board within 15 days of any change
27 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
28 returning to practice in this state.

1 Respondent shall provide a list of all states and territories where she has ever been
2 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
3 provide information regarding the status of each license and any changes in such license status
4 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
5 new nursing license during the term of probation.

6 **5. Submit Written Reports.** Respondent, during the period of probation,
7 shall submit or cause to be submitted such written reports/declarations and verification of actions
8 under penalty of perjury, as required by the Board. These reports/declarations shall contain
9 statements relative to Respondent's compliance with all the conditions of the Board's Probation
10 Program. Respondent shall immediately execute all release of information forms as may be
11 required by the Board or its representatives.

12 Respondent shall provide a copy of this Decision to the nursing regulatory agency
13 in every state and territory in which she has a registered nurse license.

14 **6. Function as a Registered Nurse.** Respondent, during the period of
15 probation, shall engage in the practice of registered nursing in California for a minimum of 24
16 hours per week for 6 consecutive months or as determined by the Board.

17 For purposes of compliance with the section, "engage in the practice of registered
18 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
19 work in any non-direct patient care position that requires licensure as a registered nurse.

20 The Board may require that advanced practice nurses engage in advanced practice
21 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
22 Board.

23 If Respondent has not complied with this condition during the probationary term,
24 and Respondent has presented sufficient documentation of her good faith efforts to comply with
25 this condition, and if no other conditions have been violated, the Board, in its discretion, may
26 grant an extension of Respondent's probation period up to one year without further hearing in
27 order to comply with this condition. During the one year extension, all original conditions of
28 probation shall apply.

1 7. **Employment Approval and Reporting Requirements.** Respondent
2 shall obtain prior approval from the Board before commencing or continuing any employment,
3 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
4 performance evaluations and other employment related reports as a registered nurse upon request
5 of the Board.

6 Respondent shall provide a copy of this Decision to her employer and immediate
7 supervisors prior to commencement of any nursing or other health care related employment.

8 In addition to the above, Respondent shall notify the Board in writing within
9 seventy-two (72) hours after she obtains any nursing or other health care related employment.

10 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
11 terminated or separated, regardless of cause, from any nursing, or other health care related
12 employment with a full explanation of the circumstances surrounding the termination or
13 separation.

14 8. **Supervision.** Respondent shall obtain prior approval from the Board
15 regarding Respondent's level of supervision and/or collaboration before commencing or
16 continuing any employment as a registered nurse, or education and training that includes patient
17 care.

18 Respondent shall practice only under the direct supervision of a registered nurse
19 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
20 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
21 are approved.

22 Respondent's level of supervision and/or collaboration may include, but is not
23 limited to the following:

24 (a) Maximum - The individual providing supervision and/or collaboration is
25 present in the patient care area or in any other work setting at all times.

26 (b) Moderate - The individual providing supervision and/or collaboration is in
27 the patient care unit or in any other work setting at least half the hours Respondent works.

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1 (c) Minimum - The individual providing supervision and/or collaboration has
2 person-to-person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care - If Respondent is approved to work in the home health
4 care setting, the individual providing supervision and/or collaboration shall have person-to-
5 person communication with Respondent as required by the Board each work day. Respondent
6 shall maintain telephone or other telecommunication contact with the individual providing
7 supervision and/or collaboration as required by the Board during each work day. The individual
8 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
9 site visits to patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's
11 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
12 traveling nurse, or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse
14 unless the registered nursing supervision and other protections for home visits have been
15 approved by the Board. Respondent shall not work in any other registered nursing occupation
16 where home visits are required.

17 Respondent shall not work in any health care setting as a supervisor of registered
18 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
19 nurses and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing
21 or as an instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the
25 Board may request documentation to determine whether there should be restrictions on the hours
26 of work.

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1 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
3 than six months prior to the end of her probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the
5 course(s). Respondent shall submit to the Board the original transcripts or certificates of
6 completion for the above required course(s). The Board shall return the original documents to
7 Respondent after photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
9 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of \$5,661.00. Respondent shall be permitted to pay these costs in a payment plan
11 approved by the Board, with payments to be completed no later than three months prior to the
12 end of the probation term.

13 If Respondent has not complied with this condition during the probationary term,
14 and Respondent has presented sufficient documentation of her good faith efforts to comply with
15 this condition, and if no other conditions have been violated, the Board, in its discretion, may
16 grant an extension of Respondent's probation period up to one year without further hearing in
17 order to comply with this condition. During the one year extension, all original conditions of
18 probation will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of her
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
21 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
22 license.

23 If during the period of probation, an accusation or petition to revoke probation has
24 been filed against Respondent's license or the Attorney General's Office has been requested to
25 prepare an accusation or petition to revoke probation against Respondent's license, the
26 probationary period shall automatically be extended and shall not expire until the accusation or
27 petition has been acted upon by the Board.

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1 13. **License Surrender.** During Respondent's term of probation, if she ceases
2 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
3 probation, Respondent may surrender her license to the Board. The Board reserves the right to
4 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
5 take any other action deemed appropriate and reasonable under the circumstances, without
6 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
7 will no longer be subject to the conditions of probation.

8 Surrender of Respondent's license shall be considered a disciplinary action and
9 shall become a part of Respondent's license history with the Board. A registered nurse whose
10 license has been surrendered may petition the Board for reinstatement no sooner than the
11 following minimum periods from the effective date of the disciplinary decision:

12 (1) Two years for reinstatement of a license that was surrendered for any
13 reason other than a mental or physical illness; or

14 (2) One year for a license surrendered for a mental or physical illness.

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1 **ACCEPTANCE**

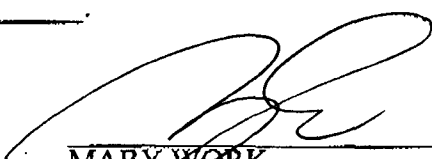
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and
3 have fully discussed it with my attorney, Mary Work. I understand the stipulation and the effect
4 it will have on my Registered Nurse License. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Department of Justice.

7 DATED: 3/21/08

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9 CLAUDIA MCCANTS MARSHALL
Respondent

10 I have read and fully discussed with Respondent Claudia McCants Marshall the
11 terms and conditions and other matters contained in the above Stipulated Settlement and
12 Disciplinary Order. I approve its form and content.

13 DATED: 4/1/08

14 
15 MARY WORK
16 Attorney for Respondent


17 **ENDORSEMENT**

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Department of Justice.

20 DATED: 4/7/08

21 EDMUND G. BROWN JR., Attorney General
22 of the State of California

23 GLORIA A. BARRIOS
24 Supervising Deputy Attorney General

25 
26 MICHEL W. VALENTINE
27 Deputy Attorney General

Attorneys for Complainant

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
Against:

Case No. 2007-228

12 CLAUDIA MCCANTS MARSHALL
13 2028 West 64th Street
14 Los Angeles, CA 90047

**FIRST AMENDED
ACCUSATION**

15 Registered Nurse License No. 252549

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 (Board), Department of Consumer Affairs.

22 2. On or about March 31, 1975, the Board issued Registered Nurse License
23 No. 252549 to Claudia McCants Marshall (Respondent). The Registered Nurse License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 September 30, 2008, unless renewed.

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7. California Code of Regulations, title 16, section 1442, states:

“As used in Section 2761 of the code, ‘gross negligence’ includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client’s health or life.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence / Incompetence)

9. Respondent is subject to disciplinary action under Section 2761, subdivision (a)(1), on the grounds of unprofessional conduct in that on or about April 1, 2003, while working as a Supervising Staff Nurse in the Neurosurgical Unit, Ward 5300, at Los Angeles County, USC Medical Center, (LAC USC), Respondent committed acts of gross negligence and/or incompetence in caring for Patient GE as follows:

A. Respondent's assigned shift at the LAC USC - Neuro Unit, Ward 5300 was the day shift from 7 a.m. to 7 p.m. This unit is a Closely Monitored Area (CMA) which requires that patients are monitored by a nurse who is physically present in the patients' room at all times(emphasis added).

B. Respondent was assigned as a Supervising Staff Registered Nurse to Care for Patient GE in Ward 5300, Room 5340. Patient GE had undergone a neurosurgical procedure, was intubated, was being mechanically ventilated, and was on a special rotating bed which placed the tubing for the ventilator at higher risk for getting tangled or caught in the surrounding machinery. The other registered nurse assigned to this room (Ms. Edem-Enang) was not in charge, or a Supervisor of Room 5340.

1 C. At or about 2:45 PM, on April 1, 2003, Patient GE's special bed was
2 rotating when the Endotracheal Tubing¹ (ETT) caught on the bed rail and forcibly extubated
3 Patient GE. At the time of this unplanned, emergent extubation of Patient GE, neither
4 Respondent or Nurse Edem-Enang were in the room with Patient GE as required by LAC USC
5 Hospital and nursing standards.

6 D. Despite Patient GE's mechanical ventilator alarm sounding, and a visitor's
7 stepping out of the room and saying "Miss, miss, come quick, something is wrong, Respondent
8 continued to sit at a desk outside of Patient GE's room doing paperwork. After being told by
9 LAC USC Hospital Clerk Ms. Leiva that "something was wrong at bed four", (Patient GE)
10 Respondent continued her paperwork and stated that she would be right there.

11 E. When Respondent entered Patient GE's room, his mechanical ventilator
12 was still alarming, and air was leaking from Patient GE's mouth. Respondent attempted to
13 "bag"² Patient GE, but then again left the room to ask Clerk Leiva to call a "Code Blue"³.

14 F. Upon the arrival of the Code Blue Team, physicians immediately started to
15 resuscitate Patient GE, but after one hour had passed, and their efforts to resuscitate Patient GE
16 were not successful, the Code Blue was terminated and Patient GE allowed to expire. When the
17 Code Blue Team arrived, Respondent explained to the physician that Patient GE had been
18 "accidentally extubated" by the bed railing when the bed was rotating. Respondent did not
19 inform them that she was not in the room as required, or that a clerk had to ask Respondent to
20 come to the room when Respondent failed to return to assist Patient GE after first being called
21 and alerted by a visitor.

22 G. After Patient GE expired, Dr. Andrew Jarminski (a family member of
23 Patient GE - but not a staff member at this hospital) went to the bedside of Patient GE and
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25 1. ETT or ET is medical shorthand for an "endotracheal" or endotracheal tube.

26 2. Bagging is manually ventilating a patient using a bag mask, a manual resuscitator.

27 3. Code Blue is the name given to a procedure to announce to and alert specially-trained
28 staff via a hospital-wide paging system, that a patient has suffered either a Cardiac or
Respiratory Arrest and that trained staff is to report immediately to the announced patient room.

1 requested that all tubes be removed from Patient GE. Respondent explained that she could not
2 do that in the event that an autopsy might be required. Dr. Jarminski pulled out Patient GE's ET
3 tube without authorization. Respondent failed to notify Marianna Pacheco, R.N., Associate
4 Director of Nursing who was at work and in her office of the event as required by Nursing
5 Generic Structure Standard No. 20, of the death of the patient, the accidental extubation, or that a
6 visitor had removed Patient GE's ETT tube. Respondent also failed to file a complete an Event
7 Notification Report form and failed to get the report to her Nurse Manager Susan Newsom until
8 April 4, 2003, several days after the event. Respondent failed to complete the "*injury, severity,*
9 *and condition after event* sections required on the form. When requested by her Nurse Manager
10 to complete this form, Respondent replied "what more could you possibly want". When Nurse
11 Manager Newsome replied that the condition of the patient and the outcome were extremely
12 important, Respondent finally replied "he died." This was the first time that Respondent's
13 Nursing Superiors were informed of the Patient's death. Respondent failed to inform her
14 employer of this Sentinel Event⁴.

15 SECOND CAUSE FOR DISCIPLINE

16 (Discipline against Respondent)

17 10. Respondent is subject to disciplinary action under section 2761,
18 subdivisions (a)(4) and (d) on the grounds of unprofessional conduct, in that Respondent was
19 discharged for her actions while on duty as a Supervising Staff Nurse on or about April 1, 2003
20 in the Neurosurgical Unit, Ward 5300 at LAC USC Medical Center, as more fully described
21 above in paragraph 9, subparagraphs A - G inclusive, by the Civil Service Commission, County
22 of Los Angeles, on May 3, 2006.

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28 4. A Sentinel Event is a non-routine patient outcome which must be reported to
management right away

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